(1998) 11 PAT CK 0072

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 11413 of 1997 17 November 1998

STEEL ENGG. and PROCESSING WORKS — APPELLANT

Vs

UNION OF INDIA — RESPONDENT

Date of Decision : 17-11-1998

Acts Referred:
Constitution of India, 1950 — Article 226
Income Tax Act, 1961 — Section 127, 132, 158BC

Citation : (1999) 106 TAXMAN 664

Hon'ble Judges : B.M. La., C.J;S.K. Singh, J

Bench : Full Bench

Advocate : L.K. BajIa and L.N. Rastogi, for the Appellant;

Judgement

1. By this writ petition, the petitioner, Steel Engineering and Processing

Works, a partnership firm, having its office at Haziganj, P.S. Chowk, Patna City, District-Patna, through Shri RX. Bhartiya, seeks a writ in the nature of certiorari for quashing the Notification No. CIT/DSI)/JUR-127/ Vol. 1-11/96-97, dated 6-12-1996 issued by the Commissioner, Patria'' Revenue Building, Gardiner Road, Patna, u/s 127 of the Income Tax Act, 1961 (''the Act'') transferring the file of the petitioner from the jurisdiction of the Asstt. Commissioner, Investigation Circle 1(2), Patna, to the- Dy. Commissioner, Special Range, Ranchi.

2. It is contended that right from its inception, the petitioner is carrying on its entire business of the firm at Patna only. In Ranchi there was stock year of the firm but that was only for the purpose of storage and delivery of goods, sales, etc., was effected at Patna and for the buyers of Ranchi areas deliveries were made from Ranchi stock-year of the firm.

3. On 4-12-1996, the petitioner received a notice from the Income Tax Officer, according to which, in the interest of the revenue, the case of the firm was to be transferred from the jurisdiction of the Asstt. Commissioner, Investigation Circle 1(2), Patna, to the jurisdiction of the Dy. Commissioner, Special Range, Ranchi,

and if the petitioner had any objection to the proposed transfer, the petitioner should appear before the respondent No. 2 on 16-12-1996 or may submit a written reply on that date. To this show-cause notice Shri Ram Swaroop 13hartia objected to the proposed transfer before the respondent No. 2 on 16-12-1996 at Patna stating that the entire business of the firm was being carried on at Patna and all its books of account, etc., were at Patna with the partners of the firm residing at Patn a and, hence, it will not be in the interest of the petitioner as also in the interest of the revenue to transfer the file to Ranchi inasmuch as in the absence of books of account it will not be possible for him to co-operate in the assessment of the firm''s income/loss at Ranchi. It is also submitted that on 5-5-1997 while the representative of Shri Ram Swaroop 13hartia was in the office of the Dy. Commissioner, Ranchi, in connection with the assessment of other concerns, a notice dated 2-1-1997 was served, according to which, the case was transferred from Patna to Ranchi by order dated 6/12-12-1996.

4. In the above background, it is contended that no proper opportunity of being heard was afforded to the petitioner and, thus, the impugned transfer of the case is contrary to the provisions of section 127 of the Act.

5. Denying the averments made by the petitioner, the revenue has filed its counter-affidavit and it is contended that the petition as framed and filed suffers from laches. Besides this, on the basis of mis-representation and suppression of fact the writ petition is filed. It is contended that on 6-121996, the transfer order is made and after a lapse of more than a year the petitioner has filed the writ petition, a copy of which was served on the respondent on 9-12-1997. It is, thus, contended that after a lapse of about one year the petitioner, exercising his right under writ jurisdiction, challenged the order of transfer and, therefore, the petitioner suffers from laches. It is also contended that the transfer of the case is made at the instance of the petitioner''s request. On 5-11-1996, the petitioner, in course of search, u/s 132 of the Act at Ranchi had made a statement on oath and thereby requested that the files of his group should be centralised at Ranchi. Therefore, it was at his request that the Commissioner, Ranchi, requested vide his letter dated 26-11-1996 to the Commissioner, Patna, to transfer the file of Ram Swaroop Bhartia group of Ranchi.

6. Therefore, it is contended that the conduct of the petitioner. is not appreciable, rather, on the other hand, it is dubious in so much so that on the one hand he is requesting the authority to transfer the file and on the other hand, he is filing writ petition challenging the order of transfer of his case to Ranchi, whereas considering his request the file has been transferred to Ranchi. It is stated that the petitioner has not approached this Court with clean hands.

7. It is also submitted that the petitioner has suppressed certain material facts in as much as he is working partner of the firm, Steel Engineering and Processing Works, Patna City, and was drawing monthly salary of Rs. 1 '' 500 (Rupees one thousand and five hundred) as is clear from the partnership deed which is annexed to the writ petition. Paragraphs 11 and 12 of the recitals in the

Partnership deed show that the petitioner and his son who were partners of the first and the fourth parts as working partners were drawing salary of Rs. 1,500 (Rupees one thousand and five hundred) each for looking after the business of the firm. Therefore, it is submitted that even if, according to the petitioner, the business of the firm is closed in 1955 (as per reference of page 6 para 16 of the writ petition), the petitioner being the managing working partner is under legal obligation to comply with the notice of the department and the liability to pay tax is joint and severe of all the partners including the petitioner. It is also contended that the petitioner has all along been not co-operating in pursuance of the notice served upon him on flimsy grounds.

8. It is also contended that after transfer of the case, the Dy. Commissioner, Ranchi, passed assessment order u/s 158BC creating a demand of Rs. 24,59,256 (Rupees twenty four lakhs fifty nine thousand two hundred fifty six) on 24-12-1997 as the petitioner and all other partners at Patna and Ranchi have not complied with the last notice served on them fixing the date of hearing on 2-12-1997. As a matter of fact, the petitioner refused to accept the last notice of hearing dated 2-12-1997.

9. It is further contended that the impugned Notification dated 6-12-1996 u/s 127 recording reasons of transfer was duly sent as per memo dated 12-12-1996 sent to the assessee as usual.

10. A rejoinder affidavit has also been filed on behalf of the petitioner denying the counter- affidavit. It is admitted that the statement of R.S. Bhartia was recorded by the respondent-department on 10-9-1996. About the guilt of laches and misrepresentation and suppression of facts, nothing has been stated in the rejoinder affidavit.

11. A reply to the rejoinder has also been filed, wherein it is reiterated that para 2 of the rejoinder is totally incorrect and it is again reiterated that the petitioner is guilty of mis-representation and suppression of f acts. It is also submitted in reply to the rejoinder that the books of account for the financial years 1985-86 to 1994-95 were seized from the premises of tile petitioner and his father at Ranchi and in this regard statement of [lie petitioner is palpably false.

12. It is also contended that the transfer of case from Patna to Ranchi was known to the petitioner on 5-5-1997, whereas he has filed the writ petition in December 1997. It is further submitted that the assessment of the firm has already been completed on 24-3-1997. It is also stated that it is not that the department has not served the notice in time but it was the petitioner who refused to accept the notice on 13-1-1997. Therefore, it was returned back and so the presumption in law about valid service of notice is in favour of the department.

13. The learned counsel Shri BajIa, appearing for the petitioner, submitted that since the provisions of section 127 have not been complied with in letter and spirit, therefore, the impugned order deserves to be quashed. In support of his

contention, the learned counsel has relied upon a decision in the case of Vijayasanthi Investments Pvt. Ltd. Vs. Chief Commissioner of Income Tax and Others, and in the case of Shantilal Hiralal and Co. and others Vs. K.S. Ramamurti, First Income Tax Officer, C-V Ward and others, . He also relied upon a decision in the case of Ajantha Industries and Others Vs. Central Board of Direct Taxes, New Delhi and Others, .

14. Laying stress on the decision in the case of Ajantha Industries (supra), the learned counsel for the petitioner has contended that the requirement of recording reasons u/s 127(1) for the transfer of a case from the Income Tax Officer to another is a mandatory direction under the law and non communication thereof to the assessee is not saved by showing that the reasons exist in the file although not communicated to the assessee. Recording of reasons and disclosure thereof are not a mere idle formality. When law requires reasons to be recorded in a particular order affecting prejudicially the interest of any person, who can challenge the order in Court, it ceases to be a mere administrative order and the vice of violation of the principles of natural justice on account of omission to communicate the reason is not expiated. Hence, it is submitted that the order impugned be quashed.

15. The learned counsel for the revenue, repudiating the submission of Shri BajIa, the learned counsel for the petitioner, has submitted that the petition deserves to be dismissed outright as it has been filed at a belated stage and by suppressing material facts as also on the ground of misrepresentation of facts. It is also argued that it is the petitioner who suggested for the transfer of his case to Ranchi.

16. On hearing the learned counsels for the parties and on perusing the records and considering the legal aspect of section 127, no doubt this provision is to be adhered to in letter and spirit and all procedural opportunities envisaged under this provision are to be afforded to the assessee. Therefore, the submission made by Shri Bafla and the authority cited by him have no two opinion. But in the facts and circumstances of the instant case, where the assessee-petitioner himself comes forward and states that his account books, etc., are at Ranchi and suggests for transfer and thereby proceeding is initiated u/s 127, still the requirement of section 127 is to be complied with and failing which the proceeding u/s 127 is to be vitiated.

17. Law in this regard is well-settled. if the assessee-petitioner does not raise any objection to his case or cases being transferred and, on the other hand, by lapse of time he submits to the jurisdiction of the transferee Court and when after transfer of the case, assessment, etc., was also made and thereafter the assessec-petitioner awakes up and asserts to the right u/s 127 - how far it will be justified ?

18. Thus, there is no doubt that law is well-settled that in respect of transfer of Income Tax cases from one Income Tax Officer to another Income Tax Officer, the

procedure as laid down under the provisions of section 127 is to be followed and opportunities as contemplated thereunder must be afforded to the assessee, failing which, the order of transfer is rendered a nullity.

19. But this is not all. The facts as are emerging from the records of this case cannot be lost sight of, which have been elaborately pleaded and described by the respondent-revenue in its counter- affidavit and also in the reply affidavit to the rejoinder affidavit stating that the proceeding for transfer of the case from Patna to Ranchi was initiated at the instance of the petitioner-assessee himself and it was he, who suggested that the entire records and books of account are at Ranchi and so it will be convenient for him tem co-operate with the assessment at Ranchi. Besides laches in approaching the Writ Court, the assessee-petitioner also submitted to the jurisdiction of the transferee authority at Ranchi.

20. This being so, the party once acquiesced to the jurisdiction of the transferee Court, all statutory rights which the assessee gets by virtue of section 127 vanish and, therefore, the assessee cannot assert that without affording opportunity as required u/s 127, the case has been transferred. In this regard see Halsbury''s Laws of England, Vol. 11, 3rd Ed., page 140, Pr. 265 and also the case in O.A.0.K. Lakshmanan Cheltiar v. Commissioner, Corporation of Madras AIR 1927 Mad. 130, which are referred to in the decision in the case of PANNALAL BINJRAJ AND ANOTHER Vs. THE UNION OF INDIA AND OTHERS. (AND OTHER CASES)., .

21. In the case of Pannalal Biiljrai (supra), which is a Constitution Bench decision, the Supreme Court lays down the law to the effect that, "if an assessee has acquiesced in the jurisdiction of the Income Tax Officer to whom a case has been transferred, he cannot subsequently object to the jurisdiction of the officer and seek to get the order of transfer quashed by invoking the jurisdiction of the Court under article 226 of the Constitution".

22. This being the law in respect of cases where the assessee has acquiesced to the jurisdiction of the transferee Court, the submissions made by Shri Bafla have no application in this case. The writ petition is, therefore, dismissed.

